

# EXHIBIT A

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“*Settlement Agreement*”) is entered into between Plaintiffs Richard Noll (“Noll”) and Rhythm Motor Sports, LLC (“Rhythm”) (“*Plaintiffs*”), individually and in their representative capacities on behalf of the Class, and Defendant eBay Inc. (“*eBay*”) (Plaintiffs and eBay collectively, “*Parties*,” or singularly, “*Party*”), subject to approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

### RECITALS

**A.** On September 15, 2011, Noll commenced a civil action in the United States District Court for the Northern District of California entitled *Richard Noll v. eBay Inc.*, Case No. 5:11-CV-04585 EJD (the “Action”), which related to recurring fees for listings placed with the Good ‘Til Cancelled duration (“GTC Listings”). On July 10, 2012, Rhythm commenced a substantially similar case entitled *Rhythm Motor Sports, LLC v. eBay Inc.*, Case No. 5:12-CV-03601 HRL, which was later voluntarily dismissed in conjunction with Rhythm’s intervention in the Action.

**B.** On October 31, 2011, and on October 17, 2012, eBay filed motions to dismiss the Original and Second Amended Class Action Complaints, respectively. In orders dated April 23, 2012 and May 30, 2012, the Court dismissed the claims based on (1) fraud; (2) California’s Unfair Competition Law (“UCL”) (California Business & Professions Code § 17200 *et seq.*); (3) the False Advertising Law (“FAL”) (California Business & Professions Code § 17500 *et seq.*); (4) the Consumers Legal Remedies Act (“CLRA”) (California Civil Code § 1750 *et seq.*); and (5) California Business & Professions Code § 17600 *et seq.* (automatic renewal/continuous service). The Court denied eBay’s motions to dismiss the claims for (1) breach of contract; (2) unjust enrichment; and (3) declaratory judgment. On July 1, 2013, Plaintiffs filed their Consolidated Third Amended Complaint (“TAC”). The TAC alleges and re-alleges further facts in support of the previously-dismissed claims based on the (1) UCL; (2) FAL; (3) CLRA; and (4) fraud. However, the Court had previously dismissed with prejudice the Section 17600 claims and all claims to recover Insertion Fees incurred during any time period in which the applicable Fees Schedules stated that “Insertion Fees are charged every 30 day period.” The Court also had dismissed each claim asserted against eBay Europe S.a.r.l. and eBay International AG with prejudice.

**C.** On March 20, 2014, eBay answered the TAC.

**D.** The Parties have participated in written discovery, document production, and several depositions, including depositions of the Parties and experts. The Parties also attended two mediations before the Honorable Dickran Tevrizian and the Honorable Carl J. West.

**E.** The Parties have investigated the facts and have analyzed the relevant legal issues with regard to the claims and defenses asserted in the Action. Based on these investigations, Plaintiffs believe the Action has merit, while eBay believes the Action has no merit.

**F.** The Parties have each considered the uncertainties of litigation; the benefits of the proposed settlement; the costs, risks, and delays associated with the continued prosecution of this complex litigation; and the likely appeals of any rulings in favor of either Plaintiffs or eBay.

**G.** In light of these considerations, and without admitting fault or liability on the part of eBay, it is now the intention of the Parties and the objective of this Settlement Agreement to dispose of, fully and completely and forever, the claims and causes of action in the Action as specified below.

#### **AGREEMENT**

**1. DEFINITIONS.** The following section defines terms that are not defined above. Some definitions use terms that are defined later in this section:

**1.1** The term “*Active eBay Account*” means an eBay account that is active, and is not on hold because of an outstanding negative balance. eBay accounts that are suspended, closed, or on hold because of a negative balance are not considered “Active eBay Accounts.”

**1.2** The term “*Claims Administrator*” means the entity, and any successors to that entity, that Plaintiffs’ Counsel retains to administer the Settlement process provided for in the Settlement Agreement, which may include, but is not limited to: (i) providing notices as contemplated herein; (ii) receiving and tracking opt-out notices; (iii) receiving and tracking requests for Settlement Checks and sending of the same; and (iv) calculating, based on records provided by eBay, the amounts of any Credits or Settlement Checks due Class Members.

**1.3** The terms “*Class Counsel*” or “*Plaintiffs’ Counsel*” means the law firm of Figari & Davenport L.L.P.

**1.4** The terms “*Class*” and “*Class Members*” mean all natural persons and entities who are United States residents and who (1) placed GTC Listings on eBay that commenced during the Class Period, and (2) were charged Disputed Fees. Excluded from the Class are the Judge of this Court and his staff, and all directors, officers, and managers of eBay, and their immediate families. A person or entity is deemed a “United States resident” for purposes of the foregoing if the primary contact information for the person or entity in eBay’s current records is an address within the United States. This class definition and the presumption of the existence of a class are for settlement purposes only.

**1.5** The term “*Closed eBay Account*” refers to an eBay account that is closed as of the date of this Settlement Agreement.

**1.6** The term “*Court*” means the United States District Court for the Northern District of California.

**1.7** The term “*Credit*” means a credit that will be applied to a Class Member’s eBay account in an amount as set forth in Section 2.1(d) below.

**1.8** The term “*Disputed Fees*” means the Insertion Fees and Optional Feature Fees incurred by Class Members after the initial 30-day listing period of a GTC Listing, less any amounts already refunded or credited by eBay to Class Members for such recurring Insertion Fees and Optional Feature Fees, as determined from eBay’s records.

**1.9** The term “*eBay’s Counsel*” means the law firm of Cooley LLP.

**1.10** The term “*Fairness Hearing*” means the hearing at which the Court decides whether to approve this Settlement Agreement as being fair, reasonable, and adequate.

**1.11** The term “*Final Order and Judgment*” means an order and judgment finally approving the Settlement of this Action. The Parties will agree upon the contents of a proposed form of Final Order and Judgment, and will attach that proposed order to Plaintiffs’ motion seeking final approval of the Settlement.

**1.12** The term “*Final Settlement Date*” means the date on which either of the following events has occurred: **(a)** if no appeal or request for review is filed or made, thirty-one (31) days after eBay receives ECF notice from Plaintiffs or the Court that the Court entered the Final Order and Judgment or **(b)** if any appeal or request for review is filed or made, fourteen (14) days after the date on which Plaintiffs file and eBay receives ECF notice that a court entered an order affirming the Final Order and Judgment or dismissed the appeal or otherwise denied review and the time for seeking all appeals has expired.

**1.13** The term “*Full Notice*” means the legal notice of the proposed Settlement terms, as approved by Class Counsel, eBay’s Counsel, and the Court, to be provided to Class Members under Section 3.3 of this Settlement Agreement.

**1.14** The term “*Gross Settlement Fund*” means the \$6,400,000 described in Section 2.1 of this Settlement Agreement.

**1.15** The term “*Net Settlement Fund*” means the remaining balance of the Gross Settlement Fund after payment of any and all fees and costs from the Gross Settlement Fund, including, but not limited to the court-approved award of fees and costs to Class Counsel, court-approved enhancement awards for Named Plaintiffs, and any administrative costs related to or incurred by the Claims Administrator.

**1.16** The term “*Internet Posting*” means a website to be established by the Claims Administrator for the proposed Settlement for the purposes of providing the Class with the Full Notice of the Settlement, and making the Full Notice available for downloading.

**1.17** The term “*Insertion Fee*” means the initial fee that an eBay seller is charged in order to list an item for sale on the eBay website. Insertion Fees are different from, and do not include Optional Feature Fees, defined below, or Final Value Fees, which are the fees that a seller is charged after a successful sale.

**1.18** The term “*Optional Feature Fee*” means the optional fee(s) that sellers may incur to purchase optional advanced listing upgrades or other optional features for their listings (e.g., scheduled listings, Gallery Plus, Listing Designer, Subtitle, Value Pack, and Bold).

Optional Feature Fees are different from, and do not include Insertion Fees, defined above, or Final Value Fees, which are the fees that a seller is charged after a successful sale.

**1.19** The term “*Named Plaintiffs*” means Plaintiffs Noll and Rhythm in their individual capacities.

**1.20** The term “*Preliminary Approval and Provisional Class Certification Order*” or “*Preliminary Approval Order*” means an order preliminarily approving the Settlement of this Action and provisionally certifying the Class. The Parties will agree upon the contents of a proposed form of Preliminary Approval and Provisional Class Certification Order, and will attach that proposed order to Plaintiffs’ motion for preliminary approval of the Settlement and for provisional class certification.

**1.21** The term “*Settlement*” means the settlement of this Action and related claims.

**1.22** The term “*Settlement Check*” means a check sent to a Class Member in lieu of a Credit.

**1.23** The term “*Class Period*” means (1) for Stores Listings, the period from March 30, 2010 to June 19, 2012, and (2) for Core Listings and Motors Listings, the period from September 16, 2008 to June 19, 2012.

**1.24** The term “*Summary Notice*” means the legal notice summarizing the proposed Settlement terms, as approved by Class Counsel, eBay’s Counsel, and the Court, which is to be provided to Class Members under Section 3.3(b) of this Settlement Agreement by email.

**1.25** The term “*Core Listing*” means a listing that, according to eBay’s records, was placed by a seller on the standard eBay marketplace (i.e., a listing that is not a Motors Listing or a Stores Listing).

**1.26** The term “*Motors Listing*” means a listing that, according to eBay’s records, was placed by a seller on eBay Motors, a specialty site on eBay for automotive vehicles, parts, and accessories, as described on the eBay website at <http://pages.ebay.com/help/buy/eBayMotors.html>.

**1.27** The term “*Stores Listing*” means a listing that, according to eBay’s records, was placed by a seller in an eBay Store, as described on the eBay website at <http://pages.ebay.com/help/sell/questions/ebay-store.html>.

**1.28** The plural of any term defined herein includes the singular and vice versa.

## **2. SETTLEMENT TERMS**

**2.1 Gross Settlement Fund.** As consideration for the Settlement and subject to Court approval, eBay will make available a Gross Settlement Fund in the total value of \$6,400,000. In no circumstance will eBay be obligated to pay any amount beyond the amount of

the Gross Settlement Fund. Amounts will be distributed from the Gross Settlement Fund as set forth below.

- (a) **Named Plaintiff Enhancement Awards.** Plaintiffs intend to seek and eBay does not object to an enhancement award of \$15,000 each to Named Plaintiffs for their participation in this Action, subject to Court approval. Plaintiffs agree to not petition the Court for or otherwise seek more than this amount for an enhancement award. A reduction by the Court or by an appellate court of the enhancement award sought by Plaintiffs shall not affect any of the Parties' rights and obligations under the Settlement Agreement, and shall only serve to increase the amount of the Net Settlement Fund to be distributed to Class Members. If the Court approves the Settlement of this Action and the enhancement award to Named Plaintiffs, eBay agrees to pay the enhancement award approved by the Court up to the amount specified above to Named Plaintiffs within thirty (30) days after the Final Settlement Date and receipt by eBay from Named Plaintiffs of the appropriate tax forms.
- (b) **Class Counsel's Attorneys' Fees and Costs Award.** Class Counsel's attorneys' fees and costs award will be determined by the Court, and will be paid from the Gross Settlement Fund. On or before the date specified in the Preliminary Approval Order, Class Counsel will submit their application requesting approval of an award of attorney's fees in an amount of up to 25% of the Gross Settlement Fund plus reasonable out-of-pocket costs and expenses. eBay will not oppose the requests in Sections 2.1 (a) and (b) above to the extent the Ninth Circuit Court of Appeals and the Northern District of California cases continue to acknowledge that 25% of a common fund is a "benchmark" fee for class counsel, subject to the Court's further discretion to examine the lodestar and other factors (Plaintiffs will submit their lodestar for examination by the Court and Class). A reduction by the Court or by an appellate court of Class Counsel's attorneys' fees and costs award shall not affect any of the Parties' other rights and obligations under the Settlement Agreement, and shall only serve to increase the amount of the Net Settlement Fund to be distributed to Class Members. eBay agrees to pay Class Counsel's attorneys' fees and costs award approved by the Court within thirty (30) days after the Final Settlement Date and receipt by eBay from Class Counsel of the appropriate tax forms.
- (c) **Administrative Costs.** Any costs incurred in connection with the administration of the settlement, including costs of notice, costs of the Internet Posting, amounts payable to the Claims Administrator (including all costs incurred by the Claims Administrator), and all other settlement administration costs will be paid from the Gross Settlement Fund. eBay agrees to pay the Claims Administrator in two installments. The first payment will occur after notice is substantially completed, and the payment will be due within thirty (30) days after receipt of an invoice

from the Claims Administrator. The second payment will be due after settlement payments to the Class Members are substantially distributed, and the payment to the Claims Administrator will be due within thirty (30) days after receipt of an invoice from the Claims Administrator.

**(d) Credits to Class Members.** After all payments are made out of the Gross Settlement Fund for the items listed in Sections 2.1(a)-(c) above, the amount of the Net Settlement Fund shall be distributed as Credits to Class Members with Active eBay Accounts as described below.

- (i)** Unless the Class Member elects otherwise, each Class Member with an Active eBay Account will receive a Credit in an amount based on the percentage of Disputed Fees that the Class Member paid for GTC Listings placed during the Class Period, as compared to the total Disputed Fees that all Class Members paid for GTC Listings placed during the Class Period. Specifically, the amount of Credit due to each Class Member will be determined by calculating the amount of Disputed Fees that such Class Member incurred for GTC Listings placed during the Class Period, as a fraction of the total Disputed Fees incurred by all Class Members for GTC Listings placed during the Class Period, and applying that fraction to the Net Settlement Fund.
- (ii)** To illustrate the calculation above, if the total Disputed Fees incurred by all Class Members for GTC Listings placed during the Class Period was \$10,000, and a particular Class Member incurred \$100 in Disputed Fees for GTC Listings placed during the Class Period, that Class Member would be entitled to receive 1% of the Net Settlement Fund.
- (iii)** The Claims Administrator will be responsible for making the calculations above, based on records to be provided by eBay.
- (iv)** For Class Members who have an outstanding balance due to eBay at the time of the issuance of the Credit, the Credit will be reduced by or applied to that outstanding balance.
- (v)** If a Class Member has a remaining Credit after Credits are applied to outstanding amounts due to eBay, that Class Member can apply those remaining Credits in any manner pursuant to the normal terms and conditions that govern the use of credits by eBay users.
- (vi)** Class Members with remaining Credit amounts who prefer not to use the Credit can apply for a refund of the Credit amount in accordance with eBay's existing "Requesting a refund of your eBay credit balance" policy, currently available at:

<http://pages.ebay.com/help/sell/refunds.html>

- (vii) The calculation in Section 2.1(d) will not include Disputed Fees incurred by Class Members for which Class Members already received a refund, as determined by eBay's records. Such refunded Disputed Fees will be excluded from the calculation set forth above.
- (viii) eBay agrees to complete the issuance of Credits within 60 days after (1) the Final Settlement Date or (2) the date eBay receives data from the Claims Administrator sufficient to issue the Credits, whichever is later. eBay's issuance of such Credits will be based on the calculations by the Claims Administrator as to the amount of Credits to be received by each Class Member.

**(e) Settlement Checks to Class Members.**

- (i) Any Class Member with an Active eBay Account who does not want to receive settlement consideration in the form of a Credit may elect to receive a Settlement Check in lieu of a Credit, provided the payment due a Class Member is \$2.00 or more. To receive a Settlement Check instead of a Credit (a Class Member cannot receive both a Credit and a Settlement Check), a Class Member with an Active eBay Account must provide notice to the Claims Administrator using the process to be specified in the notices described in Section 3.3 below. This notice must be provided to the Claims Administrator no later than the date that a Class Member must either object to or opt out of the Settlement as set forth in Sections 3.6 and 3.7, below.
- (ii) The amount of the Settlement Check will be determined based on the same formula applicable to Credits, as described above in Section 2.1(d).
- (iii) The amount of a Settlement Check due to each Class Member will be determined by the Claims Administrator based on existing eBay data. The Claims Administrator shall not, however, be required to determine any balance due to eBay or offset against the check amount any amounts due to eBay.
- (iv) As stated in Section 2.1(e)(i), a Class Member is only eligible to receive a Settlement Check if the amount owed is \$2.00 or more, due to the costs associated with preparing and distributing Settlement Checks, which are approximately \$1.00 per check. For Class Members whose Credit is less than \$2.00 and who have requested a Settlement Check, the Claims Administrator shall send an email message informing him/her that a Credit will be

applied to the Class Member's eBay account.

- (v) The amount of a Settlement Check will not be based on Disputed Fees incurred by Class Members for which Class Members already received a refund, as determined by eBay's records. Such refunded Disputed Fees will be excluded from the calculation set forth in Section 2.1(d) above.
- (vi) If the Court grants final approval of the Settlement of this Action, eBay will provide to the Claims Administrator the appropriate amount necessary to fund Settlement Checks within thirty (30) days of the Final Settlement Date, and the Claims Administrator shall complete the issuance of the Settlement Checks within 60 days after the Final Settlement Date.

**(f) Class Members Who Do Not Have Active eBay Accounts**

- (i) Any Class Member who does not have an Active eBay account will receive a Settlement Check. For those Class Members who do not have Active eBay Accounts, the Claims Administrator will issue a Settlement Check to the name of the person associated with the account in eBay's records, and will send the check to the address associated with the account in eBay's records. To the extent the Class Member wants the check made out to a different person or sent to a different address, the Class Member must provide such information to the Claims Administrator. This notice must be provided to the Claims Administrator no later than the date that a Class Member must either object to or opt out of the Settlement as set forth in Sections 3.6 and 3.7, below.
- (ii) Any Class Member with a Closed eBay Account who does not receive Mail Notice must follow the same procedure as any other Class Member who requests a Settlement Check in order to receive a Settlement Check. This procedure is outlined in Section 2.1(e)(i), above.
- (iii) The amount of the Settlement Check due to Class Members who do not have an Active eBay Account will be determined based on the same formula applicable to Credits, as described above in Section 2.1(d). A Settlement Check due to Class Members who do not have an Active eBay Account is not required to be at least \$2.00.
- (iv) The amount of a Settlement Check due to each Class Member who does not have an Active eBay Account or who has a Closed eBay Account will be determined by the Claims Administrator based on existing eBay records.

- (v) The amount of a Settlement Check will not be based on Disputed Fees incurred by Class Members for which Class Members already received a refund, as determined by eBay's records. Such refunded Disputed Fees will be excluded from the calculation set forth above.
- (vi) If the Court grants final approval of the Settlement of this Action, eBay will provide to the Claims Administrator the appropriate amount necessary to fund Settlement Checks within thirty (30) days of the Final Settlement Date, and the Claims Administrator shall complete the issuance of the Settlement Checks within 60 days after the Final Settlement Date.

(g) The amount due to each Class Member as determined by the Claims Administrator pursuant to subsections (d), (e) and (f) above will be deemed final as to Class Members, and Class Members will not be entitled to contest the accuracy of these calculations. eBay may, but is not obligated to, verify the Claims Administrator's calculations, and the Claims Administrator agrees to cooperate with reasonable requests for information in connection with such verification. In issuing Credits, eBay will rely on information from the Claims Administrator to determine which Class Members are entitled to Credits and the individual amounts of such Credits. In no circumstance will eBay be obligated to pay an amount in Credits and Settlement Checks that exceeds the amount of the Net Settlement Fund, regardless of the number of check requests from Class Members and regardless of any potential errors in calculations by the Claims Administrator.

(h) **Distribution of Remaining Balance of Net Settlement Fund**

- (i) Any balance remaining in the Net Settlement Fund (whether by reason of uncashed checks, Class Members with Closed eBay Accounts who do not request a Settlement Check, or otherwise) will be distributed to (1) the National Cyber-Forensics & Training Alliance ("NCFTA"), a non-profit corporation, established in 1997, dedicated to protecting consumers from cyber crime and fraud and (2) the National Consumer Law Center ("NCLC"), a nonprofit organization focusing on low income consumer law issues.

**3. CLASS SETTLEMENT PROCEDURES**

**3.1 Cooperation to Obtain Court Approval.** The Parties will take all reasonable steps necessary to secure the Court's approval of this Settlement Agreement and the Settlement.

**3.2 Preliminary Approval and Provisional Class Certification.** Plaintiffs must move or apply for preliminary approval of the Settlement and provisional class certification by January 15, 2015, or as close to that date as practicable. The motion or application must request the Court to:

- (a) preliminarily approve this Settlement Agreement as being the product of serious, informed, non-collusive negotiations, having no obvious deficiencies, not improperly granting preferential treatment to the proposed class representatives or segments of the class, and falling within the range of possible approval;
- (b) preliminarily approve the form, manner, and content of the Full Notice, and Summary Notice described in Section 3.3;
- (c) set deadlines for objections, opting out, and the date and time of the Fairness Hearing;
- (d) provisionally certify the Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure for settlement purposes only;
- (e) stay all proceedings in the Action until the Court renders a final decision on approval of the Settlement;
- (f) appoint Named Plaintiffs as representatives for the Class for settlement purposes only; and
- (g) appoint the law firm of Figari and Davenport, L.L.P. as Class Counsel for settlement purposes only.

The Parties will agree upon the contents of the proposed Preliminary Approval and Provisional Class Certification Order, and will attach their proposed form of Preliminary Approval Order to Plaintiffs' motion for preliminary approval of the Settlement and for provisional class certification.

**3.3 Notice.** Subject to the Court granting Preliminary Approval and Provisional Class Certification, the Parties agree that eBay, through the Claims Administrator, will provide the Class with notice of the proposed Settlement by the following methods. The Parties will agree upon the contents of the notices described in this section, and will attach their proposed forms of notice to Plaintiffs' motion for preliminary approval of the Settlement and for provisional class certification.

- (a) **Internet Posting.** Starting no later than 30 calendar days after entry of the Preliminary Approval Order, the Claims Administrator will set up an Internet website and post the Full Notice, which shall be downloadable. The website will be active until the Final Settlement Date. The website domain name shall be subject to the approval of each of the Parties, which approval shall not be unreasonably withheld.

- (b) **Summary Notice by Direct Email.** Within three (3) business days after entry of the Preliminary Approval Order, eBay shall provide data to the Claims Administrator necessary to send email and Mail Notice (as defined below), along with data necessary to calculate Credit and Settlement Check amounts, where that information is in the possession of eBay and can be obtained through reasonable efforts. Starting no later than 30 calendar days after entry of the Preliminary Approval Order, the Claims Administrator will send Summary Notice by email to each Class Member at the current email address that eBay maintains for each Class Member, provided eBay has an email address for the Class Member that can be identified through reasonable efforts. The Summary Notice will provide the URL of the Internet website containing the Full Notice and a U.S. postal mailing address for the Claims Administrator so that Class Members may request a paper copy of the Full Notice by U.S. mail.
- (c) **Summary Notice by Direct Mail.** For any Summary Notices sent to Class Members by email that are returned as undeliverable, Summary Notice will then be sent via first class mail (the “Mail Notice”) to the mailing address, if any, associated with such Class Members that are currently in eBay’s business records and can be obtained through reasonable efforts.
- (d) **Press Release.** Class Counsel will direct the issuance of a one-time press release regarding the Settlement Agreement. The contents of the press release will be as mutually agreed between eBay and Class Counsel, and shall generally be limited to a general notification of the Settlement Agreement, a statement that eBay disputes the allegations in the litigation, and a link to the website referenced above.
- (e) **Costs.** Any costs associated with the Summary Notice (either by email or direct mail) and the Internet Posting shall constitute an administrative cost and be paid from the Gross Settlement Fund. To the extent that additional notices are ordered by the Court or become necessary for the Court’s approval of the Settlement Agreement, the costs, if any, of any additional notices will also constitute administrative costs to be paid from the Gross Settlement Fund.

**3.4 CAFA Notice.** Not later than ten (10) calendar days after the Settlement Agreement is filed with the Court, the Claims Administrator shall serve upon the relevant government officials notice of the proposed Settlement in accordance with 28 U.S.C. § 1715.

**3.5 Proof of Notice.** No later than seven (7) calendar days before the filing of Plaintiffs’ motion in support of the Final Order and Judgment, Class Counsel will obtain a declaration from the Claims Administrator confirming that it has provided the Class with notice of the proposed Settlement in accordance with Section 3.3 above.

**3.6 Objections.** Any Class Member who has not submitted a timely written

exclusion request pursuant to Section 3.7 of this Settlement Agreement and who wishes to object to the fairness, reasonableness or adequacy of the Settlement Agreement or the proposed Settlement, to the attorneys' fees and costs award requested by Class Counsel, or to the enhancement awards for Named Plaintiffs, must do so by filing a written objection with the Court and delivering a copy of the objection to Class Counsel and eBay's Counsel no later than the date approved by the Court and specified in the notices provided for in Section 3.3 above. The delivery date is deemed to be the date the objection is deposited in the U.S. mail as evidenced by the postmark. It shall be the objector's responsibility to ensure receipt of any objection by the Court, Class Counsel, and eBay's Counsel. To be considered by the Court, the objection must include: (1) a heading containing the name and case number of the Action: *Richard Noll v. eBay Inc., Case No. 5:11-CV-04585 EJD*; (2) the Class Member's name, email address, postal address, and telephone number that were used in conjunction with the Class Member's eBay account; (3) a detailed statement of each objection and the factual and legal basis for each objection, and the relief that the Class Member is requesting; (4) a list of and copies of all documents or other exhibits which the Class Member may seek to use at the Fairness Hearing; and (5) a statement of whether the Class Member intends to appear, either in person or through counsel, at the Fairness Hearing, and if through counsel, a statement identifying the counsel's name, postal address, phone number, email address, and the state bar(s) to which the counsel is admitted. Any Class Member who files and serves a written objection, as described in this section, has the option to appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, to the award of attorneys' fees and costs, or to the enhancement awards for Named Plaintiffs. However, Class Members or their attorneys intending to make an appearance at the Fairness Hearing must include a statement of intention to appear in the written objection filed with the Court and delivered to Class Counsel, and eBay's Counsel, and only those Class Members who include such a statement may speak at the Fairness Hearing. If a Class Member makes an objection or appears at the Fairness Hearing through an attorney, the Class Member will be responsible for his or her personal attorney's fees and costs.

**3.7 Opt-Out/Exclusion Requests.** Class Members may elect not to be bound by this Settlement Agreement and not to receive the compensation contemplated by this Settlement Agreement.

- (a) **Manner of Making Exclusion Request.** To make an Opt-Out/Exclusion Request, Class Members must send an email, letter, or postcard to the Claims Administrator providing: (a) the title of the Action: "*Richard Noll v. eBay Inc., Case No. 5:11-CV-04585 EJD*"; (b) the full name, address, telephone number (optional) and email address associated with the eBay account of the person requesting exclusion; (c) a statement that he/she does not wish to participate in the Settlement; and (d) a signature of the Class Member requesting exclusion. No Opt-Out/Exclusion Request will be valid unless all of the information above is included. So-called "mass" or "class" opt-outs purporting to be made on behalf of multiple persons or classes of persons shall not be allowed and shall be deemed invalid. If submitted by mail, the letter, postcard or form on which the request for exclusion is made must be postmarked on or before the date approved by

the Court and specified in the notices provided for in Section 3.3 above, with postage paid by the person requesting exclusion. If submitted electronically or by email, the Opt-Out/Exclusion Request must be submitted by 11:59 p.m. Eastern Standard Time on or before the date approved by the Court and specified in the notices provided for in Section 3.3. Any Class Member who does not serve a valid and timely written Opt-Out/Exclusion Request shall be bound by all subsequent proceedings, orders and judgments. Only Class Members who serve valid and timely Opt-Out/Exclusion Requests will be deemed to have opted out of the Class, unless the Court orders otherwise.

- (b) **Exclusion List.** On or before ten (10) calendar days after the Objection and Opt-Out deadline, the Claims Administrator shall provide eBay's Counsel and Class Counsel with a list of Class Members who have timely and validly excluded themselves from the Class. The Parties must file with the Court a complete list of all Class Members who have validly and timely excluded themselves from the Class.
- (c) **Termination Clause.** If the Class Members requesting exclusion include (1) at least one individual who paid more than \$500,000 in Disputed Fees, or (2) individuals whose aggregate Disputed Fees exceed 1% of the total Disputed Fees paid by all Class Members, then eBay may, in its sole discretion, notify Class Counsel in writing that it has elected to terminate this Settlement Agreement. Such notification of intent to terminate the Settlement Agreement must be provided a minimum of seven (7) calendar days before the filing deadline for the motion seeking final approval of the Settlement Agreement and entry of a proposed Final Order and Judgment. If this Settlement Agreement is terminated, it will be deemed null and void *ab initio*. In that event: (i) the Preliminary Approval Order and all of its provisions will be vacated by its own terms; (ii) the Action will revert to the status that existed before the Settlement Agreement's execution date; and (iii) no term or draft of this Settlement Agreement, or any part or aspect of the Parties' settlement discussions, negotiations, or documentation (including any declarations and briefs filed in support of the motion for preliminary or final approval) will have any effect or be admissible into evidence, for any purpose, in this Action or any other proceeding. However, eBay shall be responsible for paying out-of-pocket amounts that Class Counsel have incurred for payment of the Claims Administrator's reasonable fees incurred from the date of the Court's Preliminary Approval of the Settlement up to the date eBay notifies Class Counsel of termination, in an amount not to exceed \$150,000.

**3.8 Fairness Hearing and Final Order and Judgment.** Before the Fairness Hearing, Plaintiffs must move or apply for Court approval of a proposed Final Order and Judgment, the form of which shall be provided to eBay in advance of the Final Approval Hearing for review and approval. The Final Order and Judgment must be consistent with the material terms of this Settlement Agreement, including, but not limited to, the definition of the Class and

the scope of the release to be provided by Class Members. Class Counsel must file with the Court a complete list of all Class Members who have validly and timely excluded themselves from the Class. Class Counsel must also draft the application papers and give eBay's Counsel drafts of the motion or application and proposed order to review at least seven (7) calendar days before the application's filing deadline. eBay shall be permitted, but not required, to file its own joint or individual brief or statement of non-opposition in support of the motion or application for Final Order and Judgment.

**3.9 Action Status If Settlement Not Approved, Final Settlement Date Does Not Occur, or Gross Settlement Fund Not Fully Funded.** This Settlement Agreement is being entered into for settlement purposes only. This Settlement Agreement will be deemed null and void *ab initio* if: (a) the Court orders or proposes modifications of, or additions to, the Parties' proposed Preliminary Approval Order, their proposed Final Order and Judgment, the Settlement Agreement, or the proposed notices pursuant to Section 3.3 that are not acceptable to all Parties, (b) the Court does not preliminarily approve the Settlement or enter the Final Order and Judgment, or (c) the Final Settlement Date does not occur for any reason other than an objection to the amount of attorneys' fees and/or costs to be awarded to Class Counsel. In that event: (a) the Preliminary Approval Order and all of its provisions and/or the Final Order and Judgment and all of its provisions, as applicable, will be vacated by its or their own terms, including, but not limited to, vacating provisional certification of the Class, provisional appointment of Plaintiffs as class representatives and provisional appointment of Plaintiffs' counsel as Class Counsel, (b) the Action will revert to the status that existed before the Settlement Agreement's execution date, (c) no term or draft of this Settlement Agreement, or any part of the Parties' settlement discussions, negotiations or documentation will have any effect or be admissible into evidence for any purpose in the Action or any other proceeding, and (d) eBay shall retain all its rights to object to the maintenance of the Action as a class action, and nothing in this Settlement Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action. In determining whether any Court-proposed or Court-ordered additions to or modifications of the Parties' proposed Preliminary Approval Order, proposed Final Order and Judgment, the Settlement Agreement, or the proposed notices pursuant to Section 3.3 are acceptable to the Parties as set forth above, the Parties each agree to exercise their judgment in good faith and will not reject additions or modifications that are merely technical or otherwise immaterial to the substance of the Settlement Agreement. If the Court orders or proposes additions or modifications to the Settlement Agreement (or to the proposed Preliminary Approval Order, Final Order and Judgment, or notices pursuant to Section 3.3), the Parties will each have seven (7) calendar days from the date of the Court's order to determine whether or not they will accept the Court's order or proposal. However, should either Party provide notice under this section that it will not accept the Court's order or proposal, then the noticing Party shall be responsible for paying the reasonable out-of-pocket expenses incurred by the other Party and paid to third parties for tasks necessary to the implementation of the Settlement from the date of the Court's Preliminary Approval of the Settlement to the date of such notice, in an amount not to exceed \$150,000.

#### 4. DISMISSAL OF ACTION AND RELEASES

**4.1 Judgment and Enforcement.** The Parties agree that should the Court grant final approval of the proposed Settlement and enter judgment, the Final Order and Judgment must include a provision for the retention of the Court's jurisdiction over the Parties to enforce the terms of this Settlement Agreement.

**4.2 Class Members' Release.** Upon entry of the Final Order and Judgment, Named Plaintiffs and all Class Members who do not validly and timely request to be excluded from the proposed Settlement, and each of their respective successors, assigns, legatees, heirs, and personal representatives release and forever discharge eBay Inc., and each of its respective direct or indirect parents, wholly or majority owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of their present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under or in concert with them, or any of them, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have or may have arising out of or relating in any way to any of the legal, factual, or other allegations made in the Action, or any legal theories that could have been raised based on the allegations of the Action (the "**Released Claims**").

With respect to the Released Claims, Named Plaintiffs and all Class Members who do not validly and timely request to be excluded from the Settlement, and each of their respective successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

Named Plaintiffs and all Class Members fully understand that the facts in existence at the time this Settlement Agreement is executed and entry of the Preliminary Approval Order may be different from the facts now believed by Named Plaintiffs and Class Members and Class Counsel to be true and expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in facts. Further, Named Plaintiffs and Class Members agree that this waiver is an essential and material term of this release and the Settlement Agreement that underlies it and that without such waiver the Settlement Agreement would not have been accepted or agreed to.

**4.3 Named Plaintiffs' Release.** Upon entry of the Final Order and Judgment, Named Plaintiffs, and each of their owners, partners, successors, assigns, legatees, heirs, and personal representatives release and forever discharge defendant eBay Inc., and each of its respective direct or indirect parents, wholly or majority owned subsidiaries, affiliated and related entities, predecessors, successors and assigns, partners, privities, and any of their present and

former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, insurers, and all persons acting by, through, under or in concert with them, or any of them, from all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, penalties, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent as of the date the Parties execute this Settlement Agreement.

In addition, Named Plaintiffs, and each of their owners, partners, successors, assigns, legatees, heirs, and personal representatives, expressly waive and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."**

Named Plaintiffs fully understand that the facts in existence at the time this Settlement Agreement is executed may be different from the facts now believed by Named Plaintiffs and Class Counsel to be true and expressly accept and assume the risk of this possible difference in facts and agree that this Settlement Agreement remains effective despite any difference in fact. Further, Named Plaintiffs agree that this waiver is an essential and material term of this release and the Settlement Agreement that underlies it and that without such waiver the Settlement Agreement would not have been accepted or agreed to.

## **5. ADDITIONAL PROVISIONS**

**5.1 eBay's Denial of Wrongdoing.** This Settlement Agreement reflects the Parties' compromise and Settlement of the disputed claims. Its provisions, and all related drafts, communications and discussions, cannot be construed as or deemed to be evidence of an admission or concession of any point of fact or law by any person or entity and cannot be offered or received into evidence or requested in discovery in this Action or any other action or proceeding as evidence of an admission or concession.

**5.2 Information Provided by eBay.** eBay represents that it undertook a reasonable investigation and provided truthful, accurate and complete information based on that investigation regarding (1) the amounts of Disputed Fees paid by Class Members for GTC Listings placed at various times during the Class Period, including broken down by date, platform (e.g., Stores Listings, Motors Listings, and Core Listings) and number of renewals; (2) information regarding the content of eBay web pages related to GTC Listings and recurring fees; (3) statistics regarding the numbers of persons paying recurring fees for GTC Listings multiple times, including in excess of 10 times; and (4) sample data for GTC Listings. eBay acknowledges that this information was material to Class Counsel's evaluation of the case and that in order to minimize the expense of further discovery, Class Counsel has reasonably relied on the information provided by eBay.

**5.3 Change of Time Periods.** All time periods and dates described in this Settlement Agreement are subject to the Court's approval. These time periods and dates may be changed by the Court or by the Parties' written agreement without notice to the Class.

**5.4 Real Parties in Interest.** In executing this Settlement Agreement, the Parties warrant and represent that they, including Plaintiffs in their individual capacities and representative capacities on behalf of the Class, are the only persons or entities having any interest in the claims asserted in this Action. Neither these claims, nor any part of these claims, have been assigned, granted, or transferred in any way to any other person, firm, or entity.

**5.5 Voluntary Agreement.** The Parties executed this Settlement Agreement voluntarily and without duress or undue influence.

**5.6 Binding on Successors.** This Settlement Agreement binds and benefits the Parties' respective successors, assigns, legatees, heirs, and personal representatives.

**5.7 Parties Represented by Counsel.** The Parties acknowledge that: (a) they have been represented by independent counsel of their own choosing during the negotiation of this Settlement and the preparation of this Settlement Agreement; (b) they have read this Settlement Agreement and are fully aware of its contents; and (c) their respective counsel fully explained to them the Settlement Agreement and its legal effect.

**5.8 Authorization.** Each Party warrants and represents that there are no liens or claims of lien or assignments, in law or equity, against any of the claims or causes of action released by this Settlement Agreement and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

**5.9 Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties and constitutes the complete, final, and exclusive embodiment of their agreement with respect to the Action. This Settlement Agreement is executed without reliance on any promise, representation, or warranty by any Party or any Party's representative other than those expressly set forth in this Settlement Agreement.

**5.10 Construction and Interpretation.** Neither the Parties nor any of the Parties' respective attorneys will be deemed the drafter of this Settlement Agreement for purposes of interpreting any provision in this Settlement Agreement in any judicial or other proceeding that may arise between them. This Settlement Agreement has been, and must be construed to have been, drafted by all the Parties to it, so that any rule that construes ambiguities against the drafter will have no force or effect.

**5.11 Headings and Formatting of Definitions.** The various headings used in this Settlement Agreement are solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. Similarly, bolding and italicizing of definitional words and phrases is solely for the Parties' convenience and may not be used to interpret this Settlement Agreement. The headings and the formatting of the text in the definitions do not define, limit, extend, or describe the Parties' intent or the scope of this Settlement Agreement.

**5.12 Modifications and Amendments.** No amendment, change, or modification to this Settlement Agreement will be valid unless in writing signed by the Parties or their counsel.

**5.13 Governing Law.** This Settlement Agreement is governed by California law and must be interpreted under California law and without regard to conflict of laws principles.

**5.14 Further Assurances.** The Parties must execute and deliver any additional papers, documents and other assurances, and must do any other acts reasonably necessary to perform their obligations under this Settlement Agreement and to carry out this Settlement Agreement's expressed intent.

**5.15 Agreement Constitutes a Complete Defense.** To the extent permitted by law, this Settlement Agreement may be pled as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit, or other proceedings that may be instituted, prosecuted or attempted in breach of or contrary to this Settlement Agreement.

**5.16 Execution Date.** This Settlement Agreement is deemed executed on the date the Settlement Agreement is signed by all of the undersigned.

**5.17 Counterparts.** This Settlement Agreement may be executed in counterparts, each of which constitutes an original, but all of which together constitutes one and the same instrument. Several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies or PDF copies of executed copies of this Settlement Agreement may be treated as originals.

**5.18 Recitals.** The Recitals are incorporated by this reference and are part of the Settlement Agreement.

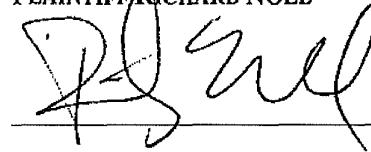
**5.19 Severability.** If any provision of this Settlement is declared by the Court to be invalid, void, or unenforceable, the remaining provisions of this Settlement will continue in full force and effect, unless the provision declared to be invalid, void, or unenforceable is material, at which point the Parties shall attempt to renegotiate the Settlement or, if that proves unavailing, Named Plaintiffs, or eBay can terminate the Settlement Agreement without prejudice to any Party.

**5.20 Inadmissibility.** This Settlement Agreement (whether approved or not approved, revoked, or made ineffective for any reason) and any proceedings or discussions related to this Settlement Agreement are inadmissible as evidence of any liability or wrongdoing whatsoever (other than for breach of this Settlement Agreement) in any Court or tribunal in any state, territory, or jurisdiction. Further, neither this Settlement Agreement, the Settlement contemplated by it, nor any proceedings taken under it, will be construed or offered or received into evidence as an admission, concession or presumption that class certification is appropriate, except to the extent necessary to consummate this Settlement Agreement and the binding effect of the Final Order and Judgment.

The Parties have agreed to the terms of this Settlement Agreement and have signed below.

Dated: January 15 2015

PLAINTIFF RICHARD NOLL



Dated: January \_\_, 2015

PLAINTIFF RHYTHM MOTOR SPORTS, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

On behalf of Rhythm Motor Sports, LLC.  
Individually and in its Representative Capacity

Dated: January \_\_, 2015

DEFENDANT EBAY INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

On behalf of eBay Inc.

**The Parties have agreed to the terms of this Settlement Agreement and have signed below.**

Dated: January \_\_, 2015

**PLAINTIFF RICHARD NOLL**

Dated: January 15, 2015

**PLAINTIFF RHYTHM MOTOR SPORTS, LLC**

By: 

Title: Member

On behalf of Rhythm Motor Sports, LLC.  
Individually and in its Representative Capacity

Dated: January \_\_, 2015

**DEFENDANT EBAY INC.**

By: 

Title:  

On behalf of eBay Inc.

**The Parties have agreed to the terms of this Settlement Agreement and have signed below.**

Dated: January \_\_, 2015

**PLAINTIFF RICHARD NOLL**

Dated: January \_\_, 2015

**PLAINTIFF RHYTHM MOTOR SPORTS, LLC**

By: \_\_\_\_\_

Title: \_\_\_\_\_

On behalf of Rhythm Motor Sports, LLC.  
Individually and in its Representative Capacity

Dated: January 14, 2015

**DEFENDANT EBAY INC.**



By: \_\_\_\_\_

Title: BRAD SERWIN  
SVP, DEPUTY GENERAL COUNSEL

On behalf of eBay Inc.